

Understanding the Environmental Protection Agency

April 23, 2008

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Understanding the Environmental Protection Agency (EPA) has been a struggle for the Delaware Nutrient Management Commission and other state agricultural officials for as long as farmers have had dirt under their fingernails. Until recently, the Commission has focused on implementing the Nutrient Management Law and left direct interaction with EPA to the Secretary of Agriculture and Secretary of Natural Resources and Environmental Control (DNREC), who both serve as ex-officio members on the Commission.

So why is the Commission getting involved with EPA? The nine-year-old Nutrient Management Law established the legal protocol that the federally mandated permit program, known as Concentrated Animal Feeding Operation (CAFO) permits, overlaps the nutrient management program. The intent was to prevent duplication, account for water quality improvement, comply with the federal Clean Water Act and address agricultural challenges within the agricultural department.

A major requirement of a CAFO permit is a nutrient management plan, similar to what the state law already requires. This state and federal joining strategy continues to remind the Commission that we have a legal and moral obligation to the agricultural community to manage this mandatory CAFO permit program and deal with the attached strings like meeting with EPA. It would be much simpler for the Commission to avoid all negotiations with EPA and yield to DNREC and other state officials to make decisions affecting farmers who generate or use animal manure. But, ignoring the EPA would result in requirements the agriculture community would likely resent. The 13 recent EPA inspections conducted on Sussex county poultry farms is a good example of why we must get involved with EPA and understand their interests.

Shortly after the EPA unannounced inspections occurred, the Secretary of Agriculture, Michael Scuse, and the Secretary of DNREC, John Hughes and the Commission established an advisory group to meet with EPA. The group consists of five individuals; three from the Commission. The group has met with EPA four times in the past four months and we have learned a few things that we would like to share:

1. EPA is more aware of the Nutrient Management Program and recognizes the accomplishments of the Commission;
2. EPA and DE recognize the need to establish a working, or at least a non-combative relationship;
3. EPA plans to continue farm inspections, mostly poultry, for the next few years in Delaware and other states within the region;
4. EPA HQ and EPA Region III (DE's region) have made inspections and enforcement actions a priority under the CAFO regulations;
5. EPA will pursue an enforcement action and/or fines if they feel a nutrient/manure discharge occurred;
6. EPA selects inspection sites by observing exposed manure or litter within the production area of animal farms;
7. EPA defines a discharge as runoff that contacts manure and runs to waters of the State to include ditches or other bodies of water;
8. Farm ponds are not waters of the state as long as there is no outlet;
9. EPA feels that DE has not issued enough CAFO permits to farms;
10. EPA sees farms near and around tax ditches as a high risk for discharge.

The advisory group continues to meet to discuss elements of the CAFO program and address the concerns of both the Commission and EPA. This process should be completed in the next few months resulting in recommendations to the Secretary of Agriculture, DNREC and the Commission. We may never completely understand how the EPA thinks, but at least we have a better idea of why they are here, their authority and what they hope to achieve.